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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

STEADROY WILLIAMS,

Petitioner,

v.

WALTER A. MCNEIL,
Secretary, Florida Department of Corrections,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Under Article III of the Constitution and 28 U.S.C. § 636 (the Federal Magistrates Act), must a district court consider arguments made in an objection to a magistrate judge's recommendation even though the arguments were not made to the magistrate judge?

2. The Eleventh Circuit held that a district judge, in reviewing a magistrate judge's recommendation, has discretion to refuse to consider an argument not presented to a magistrate. The Fourth Circuit held the opposite. Is the Eleventh Circuit correct or is the Fourth Circuit correct?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Steadroy Williams petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at *Williams v. McNeil*, 557 F.3d 1287 (11th Cir. 2009). App. 1a-12a. The relevant order of the District Court Adopting Report and Recommendation, and Dismissing Petition as Time Barred, App. 13a-15a, is unreported. The Magistrate's Report and Recommendation is at App. 16a-19a.

JURISDICTION

The Eleventh Circuit issued its decision on February 10, 2009. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section I of the Constitution

> The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and

inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

28 U.S.C. § 636 (b)(1)-(C)

(b)(1) Notwithstanding any provision of law to the contrary--

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for post trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed

> findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties. Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

STATEMENT

Introduction

Certiorari is sought to review a decision of the United States Court of Appeals for the Eleventh Circuit which acknowledges a direct conflict with the Fourth Circuit decision in *United States v. George*, 971 F.2d 1113 (4th Cir. 1992). The Eleventh Circuit's holding that a district court need not consider objections to a magistrate's recommendation if those objections were not made to the magistrate, directly conflicts with *United States v. George* on the same point of law. The Eleventh Circuit recognized that Williams' appeal "presents a question of first impression for our circuit. . . ." App. 2a. The questions presented are questions of first impression in this Court. The decision below arose from the denial of Williams' 28 U.S.C. § 2254 petition for a writ of habeas corpus.

A. State Court Proceedings

Petitioner, Steadroy Williams was charged in Florida state court with armed robbery and kidnapping. After a jury trial, he was convicted of those offenses on June 18, 2002 and on September 12, 2002, Williams was sentenced to concurrent terms of forty years in prison with a ten-year mandatory minimum term.

The Fourth District Court of Appeal of Florida affirmed Williams' conviction on October 29, 2003 and issued its mandate on November 14, 2003. On or about June 15, 2004, Williams filed a Pro Se Motion for Post-conviction Relief in the trial court. On September 10, 2004, the trial court entered an order denying the Motion.

On October 6, 2004, Williams delivered a "Notice of Appeal" to the prison authorities to mail in order to appeal the trial court's September 10, 2004 order denying his Motion for Post-conviction Relief. On October 19, 2004, Williams delivered his "Initial Brief" to prison authorities in connection with the appeal.

As of July 15, 2005, approximately nine months after Williams had delivered his Notice of Appeal and Initial Brief to prison authorities, Williams had not received an "Acknowledgment of New Case" from the clerk of the Florida District Court of Appeal. On that date, Williams wrote a letter requesting an explanation as to why he had not received any paperwork regarding his pro se appeal. On or about September 30, 2005, the clerk responded to Williams' letter stating "We have not received an appeal, petition or brief."

On October 1, 2005, Williams filed an internal inmate request with the prison law librarian requesting copies of paperwork which showed that the had copied his Notice of Appeal on October 4, 2004. On October 3, 2005, Williams filed an internal inmate request with the prison mailroom seeking proof that he had mailed both the Notice of Appeal and Initial Brief on the listed dates. On October 5, 2005, the mailroom supervisor responded to Williams' request, informing him that the mailroom does not keep such records. On or about that same date, the law librarian provided Williams with a copy of his "Copying Services Request" receipt showing that he had made copies of his Initial Brief on October 18, 2004. On October 11, 2005, Williams sent a second request to the law librarian seeking a copy of the receipt related to his Notice of Appeal. On October 17, 2005, the law librarian provided him with a copy of his "Copying Services Request" receipt for his Notice of Appeal reflecting the date of October 4, 2004.

On November 17, 2005, Williams filed a Petition for Belated Appeal in the District Court of Appeal based on the prison's failure to mail his Notice of Appeal and Initial Brief. He attached a copy of his "Copying Services Requests" and correspondence from the prison library. He also attached copies of the Notice of Appeal and Initial Brief which had the original service dates on them. In his Pro Se Petition, Williams explained that he had "placed in the hands of institutional mailroom staff an initial brief addressed to the Clerk of this Honorable Court, on October 19, 2004."

On February 9, 2006, the District Court of Appeal granted Williams' request for a belated appeal after considering the State's response. On March 1, 2006, Williams actually filed his Notice of Belated Appeal and Initial Brief. On April 26, 2006, the Fourth District Court of Appeal affirmed the trial

court's denial of his Motion for Post-Conviction Relief without opinion. The court's mandate was issued on May 26, 2006.

B. U.S. District Court Proceedings

On October 10, 2006, Williams filed a Petition for Writ of Habeas Corpus in the United States District Court for the Southern District of Florida, pursuant to 28 U.S.C. § 2254. On October 13, 2006, the district judge referred the petition to a magistrate judge for a recommendation on Williams' petition.

On March 1, 2007, the magistrate entered an Order to Show Cause instructing the State to respond to Williams' petition no later than April 2, 2007. On April 2, 2007, the State filed a motion for extension of time to respond to the Show Cause Order. On April 23, 2007, the magistrate granted the State's amended motion for extension of time.

On May 21, 2007, the State filed a second motion for extension of time to respond. On May 22, 2007, the magistrate granted the State's second motion and set a new deadline of June 22, 2007 for the State's response. On June 20, 2007, the State filed its response to the petition, arguing that the petition was untimely pursuant to 28 U.S.C. § 2244.

On July 17, 2007, the magistrate entered an order instructing Williams to file a reply on or before August 3, 2007. Through an oversight, Williams' attorney believed the electronic filing to be a duplicate copy of the State's response to the Show Cause Order and did not file a reply explaining why Williams' was not time barred. *See* App. 4a, n.1. Williams' maintained that the prison mailbox rule tolling provision would have made Williams' habeas petition timely.

App. 5a & n.2.

On November 9, 2007, the magistrate issued a Report and Recommendation recommending that the Petition be dismissed as time-barred. App. 16a-19a. On November 15, 2007, Williams filed timely written objections to the magistrate's Report and Recommendation, arguing that his petition was timely filed under the prison mailbox rule. The State did not file a response to Williams' objections.

On March 6, 2008, the district court adopted the magistrate's Report and Recommendation, dismissing Williams' petition as time-barred. In its order, the district court concluded that it was within its discretion not to consider facts or arguments raised for the first time in objections to the magistrate's report and that he would not consider Williams' timeliness arguments presented under the prison mailbox rule. App. 13a-15a. Williams appealed to the Eleventh Circuit Court of Appeals and filed a Motion for Certificate of Appealability in the District Court. On March 24, 2008, the district court granted Williams' Motion for Certificate of Appealability.

In the order granting the certificate of appealability, the district court "noted that 'jurists of reason could find it debatable whether the Court was required to consider Mr. Williams' arguments regarding timeliness.'" App. 6a, n.3.

REASONS FOR GRANTING THE PETITION

I. Conflict

Two reasons support granting the petition for writ of certiorari. The first reason is the conflict among the circuits. The second reason is that the issue presented is an important question of federal law, not answered by this Court. We start with the conflict.

The Fourth Circuit has held that a district court must address all arguments contained in an objection to a magistrate judge's recommendation. In *United States v. George*, 971 F. 2d 1113 (4th Cir. 1992), the court rejected a district court's refusal to consider government arguments made in an objection to a magistrate's recommendation, but not made to the magistrate. The court held:

> We believe that as part of its obligation to determine *de novo* any issue to which proper objection is made, a district court is required to consider all arguments directed to that issue, regardless of whether they were raised before the magistrate. By definition, *de novo* review entails consideration of an issue as if it had not been decided previously. It follows, therefore, that the party entitled to *de novo* review must be permitted to raise before the court any argument as to that issue that it could have raised before the magistrate. The district court cannot artificially limit the scope of its review by resort to ordinary prudential rules, such as waiver, provided that proper objection to the magistrate's proposed finding or conclusion has been made and the appellant's right to *de novo* review

> by the district court thereby established. Not only is this so as a matter of statutory construction; any other conclusion would render the district court's ultimate decision at least vulnerable to constitutional challenge. *See United States v. Raddatz*, 447 U.S. 667, 683, 100 S.Ct. 2406, 2416, 65 L.Ed.2d 424 (1980) (holding that "delegation" to a magistrate "does not violate Art. III *so long as the ultimate decision is made by the district court*" (emphasis added)); *cf.*

Id. at 1118 (emphasis in original).

The decision below clearly conflicts with the Fourth Circuit decision in *United States v. George*. The court below wrote: "[W]e . . . hold that a district court has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge. The district court in this case had the discretion whether to consider Williams' argument regarding timeliness of his habeas petition when he did not raise the argument in the first instance to the magistrate judge." App. 11a-12a. The court below recognized the conflict with *George* (*id.* at 9a), as did the Ninth Circuit when it rejected the *George* conclusion:

> The First and Fifth Circuits say that a district court may, but is not required to, consider evidence presented for the first time in a party's objection to the magistrate judge's recommendations. . . . The Fourth Circuit, in contrast maintains that a district court must consider any argument or evidence presented on a timely objection to a magistrate judge's recommendation, so long as it could have been raised before the magistrate judge. . . .

> Like the First and Fifth Circuits, we conclude that a district court has discretion, but is not required, to consider evidence presented for the first time in a party's objection to a magistrate judge's recommendation.

United States v. Howell, 231 F.3d 615, 621 (9th Cir. 2000).

The First Circuit was unequivocal, holding "categorically that an unsuccessful party is not entitled as a right to *de novo* review by the judge of an argument never seasonably raised before the magistrate." *Patterson-Leitch Co. v. Massachusetts Municipal Wholesale Electronic Co.*, 840 F.2d 985, 990-91 (1st Cir. 1988). The Fifth Circuit was not as direct, making its statement in a footnote and relying on a district court "holding that while the [Magistrate Judge] Act provides for *de novo* review by the district court if timely objections are filed, it does not allow the parties to raise at the district court stage new evidence, argument, and issues that were not presentede to the Magistrate judge 'absent compelling reasons.'" *Cupit v. Whitley*, 28 F.3d 532, 535 & n.5 (5th Cir. 1994). The Tenth Circuit was more succinct: "Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996).

The conflict among the circuits could not be clearer. In the Fourth Circuit, Petitioner's claim that his habeas petition was timely would have been considered by the district court. In the Eleventh Circuit his failure to make his tolling argument before the magistrate judge doomed district court review. A similar outcome would have been dictated by the decisions of the First, Fifth, Ninth and Tenth Circuits, which are discordant with the Fourth Circuit's decision in *United States v. George*.

The conflict meets the standard for certiorari: "A United States court of appeals has entered a decision in conflict with the decision of another court of appeals on the same important matter. . . ." Rule 10(a), Rules of the Supreme Court of the United States.

II. Important Unanswered Question

United States v. Raddatz, 447 U.S. 667 (1980) addressed the constitutionality of the Federal Magistrates Act and concluded "that the statute strikes the proper balance between the demands of due process and the constraints of Article III." *Id.* at 683-84. Surveying the legislative history of the Act, the Court approved Congress' conclusion "that Art. III was satisfied if the ultimate adjudicatory determination was reserved to the district court judge." *Id.* at 676. The Court continued: "Accordingly Congress made clear that the district court has plenary discretion whether to authorize a magistrate to hold an evidentiary hearing and that the magistrate acts subsidiary to and only in aid of the district court. Thereafter, the entire process takes place under the district court's total control and jurisdiction." *Id.* at 681.

The decision below gave the district court "discretion to decline to consider a party's argument when the argument was not first presented to the magistrate judge." App. 11a. It provided no bounds to the exercise of that discretion. Thus the "total control" approved in *Raddatz* has morphed into unfettered discretion to reject an argument that was not presented to the magistrate.

The Act requires that "a judge of the court shall make a de novo determination of those portions of the report or

specified proposed findings or recommendations to which objection is made. . . . The judge may also receive further evidence or recommit the matter to the magistrate with instruction." 28 U.S.C. § 636 (b)(1). But nowhere in the Act is the judge given discretion to refuse to hear arguments that were not presented to the magistrate.

Indeed, such an outcome is inconsistent with the term "de novo." De novo means "anew." Bryan A. Garner, *A Dictionary of Modern Legal Usage*, Second Edition (1995). The Fourth Circuit said: "By definition, de novo review entails consideration of an issue as if it had not been decided previously." *United States v. George*, *supra*, 971 F.2d at 1113. The Ninth Circuit echoed that definition: "*De novo* review means that the reviewing Court 'do[es] not defer to the lower court's ruling but freely consider[s] the matter anew, as if no decision has been rendered below.'" *Dawson v. Marshall*, ___ F.3d ___, 2009 WL 565067 (9th Cir. 2009), quoting *United States v. Silverman*, 861 F.2d 571, 576 (9th Cir. 1988).

By refusing to consider a matter "anew," a district court acts inconsistently with the statutory requirement. By allowing a district court to evade that requirement through an exercise of unbounded discretion, the decision below presents an important unanswered question for this Court: Does a district court judge have discretion to not treat the matter de novo, opting instead to use a failure to present an argument to a magistrate as a basis for not considering the argument in its review of the magistrate's recommendation?

The question is important because it relates to a district judge's duties under Article III of the Constitution. It is important because it presents an issue not addressed by *Raddatz*. It is important because magistrate judges play an ever

increasing role in the federal judicial system, and the interrelationship between their duties and the duties of a district judge must be clear to litigants. It is important to Petitioner Williams because his access to habeas corpus relief turns on the answer to the question presented in this Petition.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED FEBRUARY 10, 2009

UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT

No. 08-11259

D.C. Docket No. 06-61526 CV-JIC

STEADROY WILLIAMS,

Petitioner-Appellant,

v.

WALTER A. MCNEIL,
Secretary, Florida Department of Corrections,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(February 10, 2009)

Before DUBINA and CARNES, Circuit Judges, and GOLDBERG,* Judge.

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* Honorable Richard W. Goldberg, United States Court of International Trade Judge, sitting by designation.

Appendix A

DUBINA, Circuit Judge:

This appeal presents a question of first impression for our circuit: whether a district court has discretion not to consider a petitioner's arguments regarding the timeliness of his federal habeas petition when the petitioner raises the timeliness arguments for the first time in his objections to a magistrate judge's report and recommendation. For the reasons that follow, we conclude that the district court has such discretion and, under the circumstances of this case, did not abuse its discretion. Accordingly, we affirm the district court's judgment of dismissal of Steadroy Williams's 28 U.S.C. § 2254 habeas petition as time-barred.

I. STATEMENT OF THE CASE

In September 2002, a Florida jury convicted Williams of armed kidnaping and armed robbery, and the state trial court sentenced him to a prison term of forty years, ten of which were mandatory. Williams filed a notice of appeal on September 25, 2002, and the Florida District Court of Appeal affirmed Williams's judgment and sentence on October 29, 2003.

On June 15, 2004, Williams filed a *pro se* state petition for post-conviction relief pursuant to Florida Rule of Criminal Procedure 3.850, which the state trial court denied on September 10, 2004. On November 17, 2005, Williams filed a motion for belated appeal, which the appellate court granted on February 9, 2006. On March 1, 2006, Williams appealed the denial of his

petition for post-conviction relief, and on April 4, 2006, the Florida District Court of Appeal affirmed the trial court's order denying Williams state post-conviction relief.

Williams filed a federal habeas petition on October 8, 2006, in which he wrote that the state appellate court affirmed his belated appeal on May 26, 2006, and contended that his federal petition was timely because his state post-conviction petition was pending from June 17, 2004, to May 26, 2006. The State responded, arguing that Williams's federal habeas petition was time-barred under the one-year time limit on federal habeas petitions in 28 U.S.C. § 2244. The State claimed that the one-year limitations period ran for 140 days before Williams filed his state petition for post-conviction relief on June 15, 2004, which tolled the one-year limitations period. According to the State, the clock restarted when the state trial court denied Williams's motion for post-conviction relief on September 10, 2004, and ran for 433 days until he filed his motion for belated appeal of the denial of his post-conviction petition. The State posited that the clock did not stop while his motion for a belated appeal was pending, so another 84 days passed before the Florida District Court of Appeal issued its March 1, 2006, mandate allowing Williams's appeal. The clock restarted when Williams's subsequent appeal was denied and ran for another 135 days until Williams filed his federal habeas petition. The State thus argued that 792 days of untolled time passed before Williams filed his federal habeas petition, and, therefore, the petition was time-barred under the statute.

Appendix A

The district court referred the matter to the federal magistrate judge for a report and recommendation. *See* 28 U.S.C. § 636, et seq. (2006). The magistrate judge instructed Williams to file, by August 3, 2007, a reply to the State's response asserting that the petition was untimely. Williams did not file a reply.[1] On November 9, 2007, the magistrate judge issued a report and recommendation, recommending that the district court dismiss Williams's habeas petition as time-barred. Williams filed objections to the magistrate judge's report and recommendation, asserting that he had filed a notice of appeal from the trial court's denial of his post-conviction motion in October 2004, but did not discover until September 2005 that prison authorities never mailed his notice of appeal to the Florida District Court of Appeal. Thus, Williams argued that under the "prison mailbox rule," the limitations period was tolled from the day he signed the petition until the day in September 2005 that he discovered that the authorities had not mailed it.[2] Williams also contended that the limitations period was tolled while his motion for a belated appeal

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1. Williams's counsel stated in the appellate brief and during oral argument to this court that she misread the district court's order and believed that the electronic file was a duplicate copy of the State's response to a Show Cause Order. As such, she did not file a reply.

2. Under the "prison mailbox rule," a *pro se* prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing. *See* Fed. R.App. P. 4(c); *Houston v. Lack*, 487 U.S. 266, 275-76, 108 S.Ct. 2379, 2384-85, 101 L.Ed.2d 245 (1988).

was pending in the state appellate court, from November 17, 2005, to February 9, 2006. Therefore, Williams claimed that only 346 days had passed, and his federal habeas petition was timely filed.

In its order, the district court stated that it conducted a *de novo* review of the case but did not consider Williams's arguments regarding the timeliness of his petition. The district court noted that Williams never filed a reply to the State's response and found that he argued, for the first time in his objections to the magistrate judge's report and recommendation, that the limitations period was tolled for a nine-month period due to the prison authorities' failure to mail his notice of appeal. The district court concluded that it may decline to consider arguments raised for the first time in the objections to the magistrate judges's report and recommendation, and doing so was warranted in this case based on Williams's failure to respond to the magistrate judge's order directing him to file a reply on the precise issue of timeliness. Accordingly, the district court adopted the magistrate judge's report and recommendation and dismissed Williams's petition as time-barred.

The district court granted Williams's motion for a certificate of appealability ("COA").[3] In his request for a

3. In its order granting a COA, the district court noted that "jurists of reason could find it debatable whether the Court was required to consider Mr. Williams' arguments regarding timeliness." (R. Vol. 1, Doc. 21 at 2.)

COA, Williams asserts that the district court was required to consider his timeliness arguments raised for the first time in his objections to the magistrate judge's report and recommendation, and this court should reverse the district court's judgment dismissing his federal habeas petition as time-barred and remand for reconsideration, taking into account Williams's arguments regarding timeliness.[4]

II. STANDARD OF REVIEW

We review for abuse of discretion a district court's treatment of a magistrate judge's report and recommendation. *Stephens v. Tolbert*, 471 F.3d 1173, 1175 (11th Cir. 2006). However, when reviewing a district court's denial of a petition for writ of habeas corpus, we review its findings of fact for clear error and its legal conclusions *de novo*. *Breedlove v. Moore*, 279 F.3d 952, 958 (11th Cir. 2002).

III. DISCUSSION

In *Stephens v. Tolbert*, we held that a district court does not abuse its discretion by considering an

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4. On appeal, Williams also argues that we should consider the merits of his timeliness argument. Our appellate review is limited to the issues specified in the COA. *See Murray v. United States*, 145 F.3d 1249, 1250-51 (11th Cir.1998). Because Williams's contentions as to the merits of his timeliness argument are outside the scope of the COA, and we did not expand the COA to include the merits issue, we will not consider it.

argument that was not presented to the magistrate judge. 471 F.3d at 1174. We declined to decide whether a district court must consider an argument that is not presented to the magistrate judge and left that issue to "be resolved another day in the event that a district court declines to consider a new argument." *Id.* at 1177. That day has arrived. In this case, the district court declined to consider the petitioner's timeliness argument that he did not raise before the magistrate judge. Although this case involves the opposite scenario of the one we addressed in *Stephens*, we resolve this case in the same manner as we did *Stephens*. We conclude that the district court has broad discretion in reviewing a magistrate judge's report and recommendation, and, therefore, the district court did not abuse its discretion in declining to consider Williams's timeliness argument that was not presented to the magistrate judge.

Under the Federal Magistrates Act, "the magistrate [judge] has no authority to make a final and binding" ruling on a dispositive motion. *United States v. Raddatz*, 447 U.S. 667, 673, 100 S.Ct. 2406, 2411, 65 L.Ed.2d 424 (1980). The Act provides, in part, that:

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate

> judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1); *see also* Fed.R.Civ.P. 72(b) (implementing and reflecting the breadth of statutory discretion set forth in the Federal Magistrates Act). In discussing the Act, the Supreme Court noted that the purpose of the Act's language "was to vest 'ultimate adjudicatory power over dispositive motions' in the district court while granting the 'widest discretion' on how to treat the recommendations of the magistrate." *Raddatz,* 447 U.S. at 675, 100 S.Ct. at 2412 (quoting S.Rep. No. 94-625, at 10 (1976)). "Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations." *Id.* at 676, 100 S.Ct. at 2413. It is clear, however, that the Article III judge must retain final decision-making authority. *See Raddatz,* 447 U.S. at 681-82, 100 S.Ct. at 2415. The district court must retain "total control and jurisdiction" of the entire process if it refers dispositive motions to a magistrate judge for recommendation. *Thomas v. Arn,* 474 U.S. 140, 153, 106 S.Ct. 466, 474, 88 L.Ed.2d 435 (1985) (quoting *Raddatz,* 447 U.S. at 681, 100 S.Ct. at 2415).

Circuit courts differ on the meaning of *de novo* review by the district court as stated in the Magistrates Act and Federal Rule of Civil Procedure 72(b). For example, in *United States v. George,* the Fourth Circuit held that as part of its obligation to determine *de novo*

any issue considered by the magistrate judge to which a proper objection is made, a district court must consider all arguments, regardless of whether they were raised before the magistrate judge. 971 F.2d 1113, 1118 (4th Cir. 1992). The First, Fifth, Ninth, and Tenth Circuits, however, have rejected this idea, finding that requiring the district court to consider new arguments raised in the objections effectively would eliminate efficiencies gained through the Magistrates Act and would unfairly benefit litigants who could change their tactics after issuance of the magistrate judge's report and recommendation. In *Paterson-Leitch Co. v. Massachusetts Municipal Wholesale Electric Co.*, the First Circuit held "categorically that an unsuccessful party is not entitled as of right to de novo review by the judge of an argument never seasonably raised before the magistrate." 840 F.2d 985, 990-91 (1st Cir. 1988). Because the magistrate judge system was created to help alleviate the workload of the district judges, "it would be fundamentally unfair to permit a litigant to set its case in motion before the magistrate, wait to see which way the wind was blowing, and—having received an unfavorable recommendation—shift gears before the district judge." *Id.* at 991. Similarly, the Tenth Circuit stated that "[i]ssues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir.1996); *accord Cupit v. Whitley*, 28 F.3d 532, 535 & n. 5 (5th Cir. 1994) (deciding that legal arguments, such as challenges based on exhaustion or procedural default, raised for the first time in objections to a magistrate's report and recommendation may be waived).

The Ninth Circuit noted that "allowing parties to litigate fully their case before the magistrate and, if unsuccessful, to change their strategy and present a different theory to the district court would frustrate the purpose of the Magistrates Act." *Greenhow v. Sec'y of Health & Human Servs.*, 863 F.2d 633, 638 (9th Cir. 1988), *overruled on other grounds by United States v. Hardesty*, 977 F.2d 1347, 1348 (9th Cir. 1992) (en banc). In accord with this precedent, in *United States v. Howell*, the Ninth Circuit relied heavily on the district court's discretion, and, like the First, Fifth, and Tenth Circuits, stated that a district court "is not required to[ ] consider evidence presented for the first time in a party's objection to the magistrate judge's recommendation." 231 F.3d 615, 621 (9th Cir. 2000). In addition to finding that both the Magistrates Act and Supreme Court precedent provide discretion to the district court in this instance, the court noted that "[t]o require a district court to consider evidence not previously presented to the magistrate judge would effectively nullify the magistrate judge's consideration of the matter and would not help to relieve the workload of the district court." *Id.* at 622. "Systemic efficiencies would be frustrated and the magistrate judge's role reduced to that of a mere dress rehearser if a party were allowed to feint and weave at the initial hearing, and save its knockout punch for the second round." *Id.* (quoting *Paterson-Leitch Co.*, 840 F.2d at 991).

In this case, the district court acknowledged that it had discretion to consider Williams's timeliness argument but declined to do so because Williams failed

to respond to the magistrate's order directing him to file a reply on the precise issue of timeliness. The district court retained the final adjudicative authority and properly exercised its discretion in deciding whether to consider any new arguments raised by Williams in his objections to the magistrate judge's report and recommendation. *See Raddatz,* 447 U.S. at 681-82, 100 S.Ct. at 2415 (emphasizing that in order to preserve Article III authority, the federal district judge must retain final decision-making authority). Thus, we answer the question left open in *Stephens* and hold that a district court has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge. The district court in this case had the discretion whether to consider Williams's argument regarding timeliness of his habeas petition when he did not raise the argument in the first instance to the magistrate judge. Accordingly, because we conclude that the district court did not abuse its discretion in dismissing Williams's habeas petition as time-barred, we affirm the judgment of dismissal.

AFFIRMED.

APPENDIX B — ORDER ADOPTING REPORT AND RECOMMENDATION, AND DISMISSING PETITION AS TIME-BARRED OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA ENTERED MARCH 6, 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 06-61526-CIV-COHN/SNOW

STEADROY WILLIAMS,

Petitioner,

v.

JAMES R. MCDONOUGH, Secretary of the Florida Department of Corrections,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION, AND DISMISSING PETITION AS TIME-BARRED

THIS CAUSE is before the Court upon a Report and Recommendation [DE 16], submitted by United States Magistrate Judge Lurana S. Snow, regarding Petitioner Steadroy Williams' Petition for Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his convictions of armed kidnaping and armed robbery entered in Broward County Circuit Court case number 00-3844-CF-

10B. Pursuant to 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review of the record herein, including the Petition, the Report and Recommendation, and Petitioner's Objections [DE 17], and is otherwise fully advised in the premises.

In the Report and Recommendation, Magistrate Judge Snow concludes that Mr. Williams' Petition is untimely, and recommends that it be dismissed on this basis. The issue of the Petition's untimeliness was first raised by the Respondent in his Response to the Petition, filed on June 20, 2007 [DE 13]. On July 17, 2007, Judge Snow issued an Order directing Mr. Williams to file a reply on or before August 3, 2007, addressing the arguments raised by the Respondent regarding the timeliness of the Petition [DE 15]. No reply was ever filed, and on November 9, 2007, Judge Snow submitted the instant Report and Recommendation. In his Objections to the Report and Recommendation, Mr. Williams raises for the first time the argument that a period of nine months should be tolled based on the prison officials' failure to mail out a Notice of Appeal and Initial Brief in the state court appeal under Florida Rule of Criminal Procedure 3.850 when it was first submitted to them by Mr. Williams for mailing.

Although the Eleventh Circuit has held that a district court does not abuse its discretion where it considers arguments raised for the first time in objections to a report and recommendation, it has expressly declined to rule on the question of whether or not a District Court *must* consider such arguments. *Stephens v. Tolbert*, 471

F.3d 1173, 1177 (11th Cir.2006). Other circuits, however, have concluded that district courts do have the discretion to refuse to consider arguments raised for the first time in objections. The Ninth Circuit has held that "[a]rguments raised for the first time on appeal have traditionally been held to be barred, absent exceptional circumstances or a convincing explanation for the failure to present them to the court below . . . The district court was well within its discretion in applying this rule to matters heard in the first instance by the magistrate." *Greenhow v. Sec'y of Health & Human Servs.*, 863 F.2d 633, 638-39 (9th Cir.1988) (*overruled on other grounds by United States v. Hardesty*, 977 F.2d 1347-48 (9th Cir.1992)). The First Circuit has agreed, stating "[w]e hold categorically that an unsuccessful party is not entitled as of right to de novo review by the judge of an argument never seasonably raised before the magistrate." *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985, 990-91 (1st Cir.1988). Similarly, the Tenth Circuit has held that "[i]ssues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir.1996). Likewise, the Fifth Circuit has held that a party waives an argument by failing to raise it before the magistrate judge and waiting to assert it until after the magistrate court has issued its findings and recommendations. *Cupit v. Whitley*, 28 F.3d 532, 535 (5th Cir.1994).

Based on a consideration of this precedent, as well as the circumstances of this case, the Court concludes that it may decline to consider the arguments raised

for the first time in Petitioner's Objections, and that doing so is warranted based on Petitioner's failure to respond to Judge Snow's Order directing him to file a reply on the precise issue of timeliness. Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report of Magistrate Judge Lurana S. Snow [DE 16] is **ADOPTED.**

2. Petitioner Steadroy Williams' Petition for Writ of Habeas Corpus [DE 1] is **DISMISSED** as time-barred.

3. Any other pending motions are **DENIED as moot.** The Clerk of Court is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, on this 6th day of March, 2008.

s/ James I. Cohn
JAMES I. COHN
United States District Judge

APPENDIX C — REPORT AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA ENTERED NOVEMBER 9, 2007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-61526-CIV-COHN

STEADROY WILLIAMS,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on the petitioner **Steadroy Williams'** Petition for Writ of Habeas Corpus (DE 1) filed pursuant to 28 U.S.C. § 2254, which was referred to United States Magistrate, Lurana S. Snow, for report and recommendation. In its response to the instant petition, the respondent argues that the petitioner's claims are barred by the AEDPA's one-year statute of limitations period. The petitioner was ordered to file a reply memorandum addressing the issue of timeliness, but no reply was filed.

Appendix C

I. PROCEDURAL HISTORY

The petitioner was charged and convicted of armed kidnaping and armed robbery in violation of Fla. Stat. 812.13. He was sentenced to a prison term of forty years, ten of which were mandatory. The petitioner filed a notice of appeal on September 25, 2002, and on October 29, 2003, the Fourth District Court of Appeal affirmed the judgment and sentence.

On June 15, 2004, the petitioner filed a *pro se* Petition for Post Conviction Relief, which was denied by the trial court on September 10, 2004. On November 17, 2005, the petitioner filed a motion for belated appeal, which was granted on February 9, 2006. On March 1, 2006, the petitioner appealed the denial of his Petition for Post Conviction Relief, and on April 4, 2006, the Court of Appeal affirmed the order of the trial court. The instant petition was filed on October 8, 2006.

II. RECOMMENDATIONS OF LAW

Pursuant to 28 U.S.C. § 2244(d)(1), a petition for writ of habeas corpus must be filed within one year from the latest of the following events:

> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in

> violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

Subsection (2) of § 2244(d) provides that the time during which a properly filed application for State post-conviction relief is pending is not counted in determining whether the limitations period has run.

The respondent points out that the judgment against the petitioner became final, at the latest, on January 27, 2004 (ninety days after his conviction was affirmed on appeal). *See, Clay v. United States*, 537 U.S. 522, 532, 123 S.Ct. 1072, 155 L.Ed.2d 88 (2003). Therefore, if there were no excludable time, a § 2254 petition would have had to be filed prior to January 27, 2005. However, the time was tolled on June 15, 2004, when the petitioner filed his petition for post conviction relief. At that point, 140 days of the one-year limitation period had elapsed.

The time began to run again on September 10, 2004, when the petition was denied. The time period was not tolled until November 17, 2005, when the petitioner filed a motion for a belated appeal. An additional 433 days had elapsed, during which the limitations period for filing a § 2254 motion expired. Moreover, the instant petition was not filed until October 6, 2006, 135 days after the Fourth District Court of Appeal affirmed the denial of the petition for post conviction relief.

The respondent asks that the instant petition be dismissed as untimely. Despite this Court's order, the petitioner has not offered any rebuttal to the respondent's contention that the statute of limitations has run. Accordingly, the instant petition should be dismissed.

III. CONCLUSION

This Court has reviewed carefully the record in this matter as well as the applicable law, and being fully advised in the premises, it is hereby

RECOMMENDED that the Petition for Writ of Habeas Corpus be DISMISSED.

The parties will have ten days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with James I. Cohn, United States District Judge. Failure to file objections timely shall bar the parties from attacking on appeal factual findings contained herein. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982) (*en banc*).

Appendix C

DONE AND SUBMITTED at Fort Lauderdale, Florida, this 9th day of November, 2007.

s/ Lubrana S. Snow
LUBRANA S. SNOW
UNITED STATES MAGISTRATE JUDGE